



National Highway Traffic Safety Administration

Petition for Exemption from the

Federal Motor Vehicle Theft Prevention Standard; Nissan North America, INC.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Nissan North America, Inc.'s (Nissan) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its ARIYA vehicle line beginning in model year (MY) 2023. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. Nissan also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2023 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43-439, NRM-310, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Ms. Ballard's phone number is (202) 366-5222. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION

Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR

part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an “immobilizer”) as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.¹ Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the Federal Register and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Nissan Motor North America, Inc.'s (Nissan) petition for its ARIYA vehicle line beginning in MY 2023. Nissan's petition is granted under 49 U.S.C. 33106 and 49 CFR 543.8(c), which state that if the Secretary of Transportation (NHTSA, by delegation) does not make a decision about a petition within 120 days of the petition submission, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year. Separately, based on the information provided in Nissan's petition, NHTSA has determined that the antitheft device to be placed on its vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking

¹ 49 U.S.C. 33106(d).

requirements of the theft prevention standard.

I. Specific Petition Content Requirements under 49 CFR 543.6

Pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention, Nissan petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2023. Nissan petitioned under 49 CFR 543.6, Petition: Specific content requirements, which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.²

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective

² 49 CFR 543.6(a)(3).

in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,³ and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.⁴

The following sections describe Nissan's petition information provided pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention. To the extent that specific information in Nissan's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.⁵

II. Nissan's Petition for Exemption

In a petition dated April 19, 2021, Nissan requested an exemption from the parts-marking requirements of the theft prevention standard for the ARIYA vehicle line beginning with MY 2023.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the ARIYA vehicle line. Nissan stated that its MY 2023 ARIYA vehicle line will be installed with a passive, electronic engine immobilizer device as standard equipment, as required by 543.6(a)(1). Key components of the antitheft device include an engine immobilizer, immobilizer control (CONT ASSY-SMART KEYLESS), power electronic box (PEB), immobilizer antenna and a key FOB with a pre-

³ 49 CFR 543.6(a)(4).

⁴ 49 CFR 543.6(a)(5).

⁵ 49 CFR 512.20(a).

registered key-ID microchip. Nissan will not provide any visible or audible indication of unauthorized vehicle entry (i.e., flashing lights and horn alarm) on its ARIYA vehicle line.

Pursuant to Section 543.6(a)(3), Nissan explained that activation of its immobilizer device occurs automatically when the ignition switch is turned to the “OFF” position. Nissan also stated that the immobilizer device prevents normal operation of the vehicle without using a special key. Nissan explained that when the brake SW is on and the key FOB is near the engine start switch, the CONT ASSY-SMART KEYLESS generates an electric field between the immobilizer antenna and the microchip incorporated in the specially designed ignition key. The microchip then transmits the key-ID via radio wave. Next, the key-ID is received by the antenna and is amplified and transmitted to the CONT ASSY-SMART KEYLESS. Nissan further stated that the PEB will “request” the CONT ASSY-SMART KEYLESS to start the encrypted communication, and once the code is accepted, the CONT ASSY-SMART KEYLESS will send an OK-code and an encrypted code to the PEB. If the code is not accepted, the immobilizer control unit will send a NG-code. Nissan stated that the PEB will only stop the motor if it receives a NG-code from the CONT ASSY-SMART KEYLESS, the encrypted code is not correct, or no signal is received from the CONT ASSY-SMART KEYLESS.

As required in section 543.6(a)(3)(v), Nissan provided information on the reliability and durability of its proposed device. Nissan stated that its antitheft device is tested for specific parameters to ensure its reliability and durability. Nissan provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Nissan stated that its immobilizer device satisfies the European Directive ECE R116, including tamper resistance. Nissan further stated that all control units for the device are located inside the vehicle, providing further protection from unauthorized accessibility of the device from outside the vehicle. Nissan also stated that if a potential intruder were to damage the immobilizer system, it is designed so that the motor cannot be restarted and that the motor will restart only after transmission of the correct Key-ID and encrypted code are

accepted. Nissan stated that if an intruder were to substitute another immobilizer unit, the vehicle would still not be operable since the immobilizer and PEB are code-paired.

Nissan stated that the proposed device is functionally equivalent to the antitheft device installed on the MY 2011 Nissan Cube vehicle line which was granted a parts-marking exemption by the agency on April 14, 2010 (75 FR 19458). The agency notes that the theft rates for the Nissan Cube using an average of 3 MYs data (2012-2014), are 0.3322, 0.6471 and 2.0373 per thousand vehicles produced, respectively. For reference, the theft rate for MY 2014 passenger vehicles stolen in calendar year 2014 is 1.1512 thefts per thousand vehicles produced (82 FR 28246).

Nissan also referenced the National Insurance Crime Bureau's data which it stated showed a 70% reduction in theft when comparing MY 1997 Ford Mustangs (with a standard immobilizer) to MY 1995 Ford Mustangs (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data which reported that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated that theft rates for its Pathfinder vehicle line experienced reductions from model year (MY) 2000 to 2001 and subsequent years with implementation of an engine immobilizer device as standard equipment. Specifically, Nissan stated that the agency's theft rate data for MY's 2001 through 2005 reported theft rates of 1.9146, 1.8011, 1.1482, 0.8102, and 1.7298 respectively for the Nissan Pathfinder.

Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of full exemptions to General Motors Corporation for its Buick Riviera and Oldsmobile Aurora vehicle lines (58 FR 44872, August 25, 1993) and its Cadillac Seville vehicle line (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated that it believes that since its device is functionally equivalent to other comparable manufacturers' devices that have already been

granted parts-marking exemptions by the agency, along with the evidence of reduced theft rates for vehicle lines equipped with similar devices and advanced technology of transponder electronic security, the Nissan immobilizer device will have the potential to achieve the level of effectiveness equivalent to those vehicles already exempted by the agency.

III. Decision to Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541, or deemed approved under 49 U.S.C. 33106(d). As discussed above, in this case, Nissan's petition is granted under 49 U.S.C. 33106(d).

However, separately, NHTSA also finds that Nissan has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Nissan provided about its antitheft device. NHTSA believes, based on Nissan's supporting evidence, the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Nissan's antitheft device will provide four of the five types of performance features listed in section 543.6(a)(3)⁶: promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are

⁶ See, e.g., 70 FR 74107 (Dec. 14, 2005). NHTSA has previously concluded that the lack of a visual or audio alarm has not prevented some antitheft devices from being effective protection against theft, where the theft data indicate a decline in theft rates for vehicle lines that have been equipped with devices similar to that what the petitioner is proposing to use.

exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Nissan decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which the exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption."

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Nissan contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the ARIYA vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2023 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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